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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,703	06/22/2006	Anthony Morel	BWAC-30542	9744
27883	7590	10/28/2009		
GRADY K. BERGEN 3333 LEE PARKWAY SUITE 600 DALLAS, TX 75219			EXAMINER MCCORMICK, GABRIELLE A	
			ART UNIT 3629	PAPER NUMBER
			NOTIFICATION DATE 10/28/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/596,703	Applicant(s) MOREL, ANTHONY	
	Examiner Gabrielle McCormick	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 1-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

5. This action is in reply to the application filed on June 22, 2006.
6. Claims 1-16 have been amended.
7. Claims 1-16 are currently pending and have been examined.

Priority

8. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/596703, filed on June 22, 2006.

Claim Objections

9. Claims 1-16 are objected to because of the following informalities: the claims have been amended, but the amended status is not indicated following each claim number. Appropriate correction is required.
10. Claim 1 contains the term "informationincluding" which is understood as "information including".

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
8. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Claim 1 contains the following terms which lack proper antecedent basis: "the steps"; "the matched result"; "the corresponding information"; "the user"; and "the result".

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10. Claims 4, 10 and 12 contain the term "the steps"; claims 6 and 12 contain the term "the corresponding alarm level"; claim 7 contains the terms "the steps"; "the content information" and "the user"; claim 13 contains the terms "the matched result"; "the corresponding information"; "user"; and "the result"; claim 15 contains the term "the user" and claim 16 contains the term "the corresponding an alarm characteristic". These terms lack proper antecedent basis.
11. NOTE: Due to the numerous 112, second paragraph rejections cited above, the Examiner has applied art to the claims to the extent that they are understood.

Claim Rejections - 35 USC § 101

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-12 are rejected as being directed to non-statutory subject matter. Claims 1 and 7 are method claims that recite process steps that are not tied to a particular machine. Based on recent Federal Circuit decision (see *In re Bilski*), an applicant may show that a process claim satisfies 35 USC 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. (See Benson, 409 U.S. at 70). First, as illustrated by Benson, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. (See Benson, 409 U.S. at 71-72). Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. (See Flook, 437 U.S. at 590).
14. Because the applicable test to determine whether a claim is drawn to a patent-eligible process under 35 USC 101 is the machine-or-transformation test set forth by the Supreme Court, claims 1 and 7 fail that test and are therefore rejected under 35 USC 101.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. **Claims 1-4, 7-10 and 13-16** are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas et al. (US Pub. No. 2003/0093580, hereinafter referred to as "Thomas").
17. **Claims 1 and 13:** Thomas discloses:
- *receiving content information including a particular information characteristic; (P[0011])*
 - *matching said content information with a user profile; (P[0011])*
 - *processing the matched result correspondingly in a content-alarm manner according to said information characteristic; (P[0011]; P[0018])*
 - *recommending the corresponding information to the user according to the result processed in the content-alarm manner. (P[0011-0012]).*
18. **Claims 4 and 14:** Thomas discloses obtaining a corresponding alarm characteristic (P[0021]) and comprehensive alarm level (P[0018] and P[0027]) and processing the matched result according to the comprehensive alarm level (P[0018-0019]).
19. **Claims 7, 10, 15 and 16:** Thomas discloses updating a user profile based on feedback from the user that results in alerts for the user. (P[0024]: profiles can be edited and updated by the system based on the viewing habits of the user (i.e., user feedback information)). Thomas discloses obtaining a corresponding alarm characteristic (P[0021]) and comprehensive alarm level (P[0018] and P[0027]) and processing the matched result according to the comprehensive alarm level (P[0018-0019]). As the feedback information has been used to update the profile, the feedback information is therefore processed according to the alert levels as indicated by the updated profile.

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20. **Claims 2, 3, 8 and 9:** Thomas discloses a content characteristic, program information and a keyword. (P[0031] and P[0046]).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. **Claims 5 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US Pub. No. 2003/0093580, hereinafter referred to as "Thomas") in view of Zaslow ("If TiVo Considers You Gay, Here Is How to Set Record Straight: With Low Profile --- Digital Recorder's Video Selections For Its Users Can Give Them Pause". Wall Street Journal. (Europe). Brussels: Nov 28, 2002. pg. A.1).
23. **Claims 5 and 11:** Thomas discloses various alarm characteristics (P[0021]) but does not disclose either age, sex, violence, vulgarity, discrimination or drug.
24. Zaslow discloses that TiVo recommendations are based on user feedback and will deliver content based on sex. (pg. 2; para. 4).
25. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a sex alarm characteristic, as disclosed by Zaslow in the system disclosed by Thomas, for the motivation of providing a method of delivering content used on a user's sexual preferences.
26. Further, these differences are only found in the **nonfunctional descriptive data** and are not functionally involved in the steps recited. **The personalized delivery of content would be performed regardless of characteristics of the content.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703

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F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

27. **Claims 6 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US Pub. No. 2003/0093580, hereinafter referred to as "Thomas").
28. **Claims 6 and 12:** Thomas discloses alarm characteristics, a predetermined threshold (P[0021]: alerts are issued based on a predetermined drop in stock price) and an alarm level (P[0018]). Thomas does not explicitly disclose an alarm level corresponding with a threshold, however, it is obvious that alerts based on a threshold would be combined with the alarm levels disclosed by Thomas in order to differentiate an alert requiring immediate attention (such as a drop in stock price below a pre-set limit) from an alert based on celebrity interest stories. Thomas discloses levels of emergency alerts (P[0018]), therefore it is obvious to combine this level with thresholds in order to focus a user's attention and help prioritize his/her actions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./
Examiner, Art Unit 3629

/JOHN G. WEISS/
Supervisory Patent Examiner, Art Unit 3629